



USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 11/19/2021

November 18, 2021

BY ECF

The Hon. Stewart D. Aaron
 United States Magistrate Judge
 Southern District of New York
 500 Pearl Street
 New York, NY 10007

Motion GRANTED. The Court hereby accepts the parties' offer to withdraw their cross-motions without prejudice; thus, the cross-motions filed at ECF Nos. 22 and 28 hereby are deemed withdrawn. The proposed briefing schedule set forth below is adopted. The parties shall file to the docket their renewed cross-motions and related briefs no later than Thursday, February 3, 2022.
 SO ORDERED.

Dated: November 19, 2021

Att cl an

Re: *Wilson v. FBI*
 No. 20-cv-10324 (LAK) (SDA)

Dear Judge Aaron:

This Office represents Defendant in the above-captioned action which Plaintiff brings pursuant to the Freedom of Information Act. I write on behalf of both parties to respectfully request an adjustment of the briefing schedule with respect to the parties' cross-motions for summary judgment.

By way of background, on April 27, 2021, the Court adopted the parties' proposed briefing schedule with respect to summary judgment motion practice. Specifically, that Defendant's moving brief would be filed by August 30, 2021, Plaintiff's opposition brief would be filed by September 30, 2021, and Defendant's reply would be filed by October 14, 2021. *See* Dkt. No. 18. As to the first two dates noted above, each side sought one extension of their respective deadline, which the Court granted. *See* Dkt. Nos. 21, 26. Most recently, Plaintiff filed his brief on November 17, 2021, with that motion amounting to both an opposition to Defendant's motion and a cross-motion for summary judgment. *See* Dkt. No. 28.

As indicated above, the initial briefing schedule did not contemplate Plaintiff filing a cross-motion for summary judgment—otherwise it would have required four briefs in this briefing cycle, rather than three (*i.e.* Defendant's motion, Plaintiff's cross-motion/opposition, Defendant's opposition/reply, and Plaintiff's reply). Accordingly, as an initial matter, the briefing schedule must be adjusted in order to provide Plaintiff with the opportunity for a reply brief on his cross-motion for summary judgment.

Additionally, in the letter to the Court where the parties jointly proposed a briefing schedule, it was noted that Plaintiff intended to challenge the adequacy of the Defendant's search for documents in this matter. No mention was made of Plaintiff's intent to challenge any documents withheld or redacted pursuant to one of the FOIA exemptions. Additionally, as

noted in the declaration supporting Defendant's motion, “[b]y electronic mail ('email') Plaintiff's counsel represented to the United States Attorney's Office for the Southern District of New York that Plaintiff would not challenge the FBI's withholdings of records or portions of information within records. Therefore, the FBI's justification for withholding records or portions of information within records is not set forth herein.” Dkt. No. 24 at ¶ 5.

However, during the course of drafting his brief, Plaintiff came to revisit his previously stated position and decided to challenge Defendant's withholdings. In light of this change, the parties now come to the Court seeking a modification of the briefing schedule in order to eliminate any prejudice to Defendant.

Specifically, to respond to Plaintiff's challenges to Defendant's withholdings, Defendant must now either create a *Vaughn* Index or provide a detailed declaration describing the basis for each of its withholdings prior to drafting its memorandum of law.

Currently, Defendant's reply brief (which will now be a reply and opposition to Plaintiff's cross-motion) is due on December 6, 2021. The parties respectfully request a 45-day extension of this deadline to January 20, 2022. While the parties acknowledge that this is a somewhat lengthy extension, they submit that it is justified in light of the above and the two intervening holiday periods. If the Court grants this request, then the parties respectfully request that Plaintiff be permitted to file his reply brief by February 3, 2022.¹

The parties thank the Court for its consideration of this matter.

Respectfully,

DAMIAN WILLIAMS
United States Attorney for the
Southern District of New York

By: /s/ Alexander J. Hogan
ALEXANDER J. HOGAN
Assistant United States Attorney
86 Chambers Street, Third Floor
New York, New York 10007
Tel.: (212) 637-2799
E-mail: alexander.hogan@usdoj.gov

¹ Additionally, the parties note the following. To the extent the Court does not want a briefing cycle to be pending on its docket from September to February, the parties would be willing to withdraw their motions without prejudice to renewal. Specifically, the parties could serve their next two briefs on each other and, then, when briefing is complete, file all four briefs simultaneously on the docket.